

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 426 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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STATE OF GUJARAT

Versus

VAGHARI BACHUBHAI PUJABHAI      RAMOL NR.MANDIR VIRAMGAM

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Appearance:

Mr L.R.Pujari, for the appellant.

MR VIVEK BAROT for Respondent No. 1, 2

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CORAM : MR.JUSTICE J.R.VORA

Date of decision: 26/12/97

ORAL JUDGEMENT

This appeal is preferred against the judgment of acquittal of the accused by the learned Judicial Magistrate, First Class at Viramgam in Criminal Case No.1449/86 under section 324, 447 and 114 of the Indian Penal Code.

2. Learned AGP, Mr Pujari was heard, while learned

advocate on behalf of the respondents has not appeared.

3. Referring to the brief facts, the present two respondents came to be chargesheeted for the above mentioned offence punishable under section 324, 447 and 114 of IPC and came to be tried by the learned Magistrate. After full-fledged trial, the learned Magistrate came to the conclusion that the prosecution had failed to prove its case because he found that, firstly, discrepancies in the evidence of eye witness and secondly, important eye witness was dropped by the prosecution.

4. Having scrutinized the record, it is found that there are discrepancies in the evidence regarding the incident in the evidence of the complainant and sole eye witness Abbas Yusaf, examined at Ex.18, and hence no reliance can be placed either on the evidence of the complainant or on the evidence of the eye witness and particularly coupled with the circumstances that the other eye witness Vasram Popat has been dropped by the prosecution. Further, the Trial Court also found discrepancy within the ocular evidence and medical evidence produced and hence the Trial Court came to believe that the charge under section 324, 447 and 114 could not be brought home. In addition to this, prosecution has also failed to prove that the place of incident, that is, field was owned by the complainant.

5. No case has been made out to interfere in the judgment of acquittal of the Trial Court because there is discrepancy in the ocular evidence coupled with the dropping of material eye witness and the discrepancy between the medical evidence and ocular evidence. Hence no interference is called for or warranted in the order of acquittal recorded by the learned Magistrate.

6. In the result, this acquittal appeal fails and is rejected.

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